

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JUAN LAHERA,

Plaintiff(s),

CASE NUMBER: 08-11677

HONORABLE VICTORIA A. ROBERTS

v.

THE WALT DISNEY COMPANY et al.,

Defendant(s).

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**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

On June 25, 2008, the Court denied Plaintiff's request for a default judgment against Defendant TV Guide Magazine Group, Inc. ("TV Guide"). Plaintiff asks the Court to reconsider its decision. (Doc. #30).

Eastern District of Michigan Local Rule 7.1(g)(3) provides for reconsideration if the movant demonstrates a palpable defect by which the court and the parties have been misled, and further demonstrates that correcting the defect will result in a different disposition of the case. "A 'palpable defect' is a defect which is obvious, clear, unmistakable, manifest, or plain." *Fleck v. Titan Tire Corp.*, 177 F.Supp.2d 605, 624 (E.D. Mich. 2001). "[T]he court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication." L.R. 7.1(g)(3).

First, Plaintiff says the Court's Order suffers from a palpable defect because it does not address whether TV Guide committed perjury when it stated on its "Notice and

Acknowledgment of Receipt of Summons and Complaint by Mail” form that it received a copy of the Summons and Complaint at its Hollywood, California address. According to Plaintiff, the U.S. Marshal Service served the Summons and Complaint to TV Guide’s Radnor, Pennsylvania address.

The Court disagrees that TV Guide committed perjury. Indeed, Plaintiff admits that TV Guide sent the Summons and Complaint from Pennsylvania to California. Thus, TV Guide did not falsely acknowledge receiving the Summons and Complaint at its Hollywood, California address.

Second, Plaintiff says TV Guide violated Fed. R. Civ. P. 4(c)(2) when it sent the Summons and Complaint from Pennsylvania to California. Fed. R. Civ. P. 4(c)(2) says, “Any person who is at least 18 years old *and not a party* may serve a summons and complaint.” (Emphasis added). TV Guide did not serve the Summons and Complaint when it was sent from Pennsylvania to California; service was completed by the U.S. Marshal Service on May 15, 2008.

Finally, Plaintiff asks the Court to enter a default judgment against TV Guide for failing to respond to the Summons and Complaint within the applicable time limit. The Court declines to do so; it entered an Order dated June 11, 2008 that gives TV Guide additional time to respond.

Plaintiff’s motion is **DENIED**.

IT IS ORDERED.

s/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: July 28, 2008

The undersigned certifies that a copy of this document was served on the attorneys of record and Juan Lahera by electronic means or U.S. Mail on July 28, 2008.

s/Linda Vertriest
Deputy Clerk